

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re JOSEPH ALLEN LEPORE, Petitioner. <hr style="width: 40%; margin-left: 0;"/>	} } } }	Case No. CV 08-5779 DDP (AN) ORDER DISMISSING PETITION FOR WRIT OF MANDAMUS FOR LACK OF JURISDICTION
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On September 4, 2008, Joseph Allen Lepore (“Petitioner”), a state prisoner, filed his pending petition for a writ of mandamus (“Petition”). The gravamen of the Petition’s allegations and relevant state court records^{1/} establish that Petitioner is currently imprisoned pursuant to a 2004 judgment of conviction for second degree robbery and related prison sentence that he sustained following a jury trial in the California Superior Court for Los Angeles County (“LASC”) (case no. GA052032) (“2004 Conviction”). (Pet. 1-4; *see also People v. Lepore*, 2005 WL 1580649 at *1 (Cal. Ct. App. Dist 2/Div. 2 filed July 7, 2005).) The Petition establishes Petitioner is principally requesting this Court to order the state appellate courts that affirmed his 2004 Conviction to modify his sentence because Petitioner claims the trial court erroneously enhanced his sentence based upon his prior 1981 conviction for committing a lewd act upon a child that he sustained in *People v. Lepore*, LASC case no. A368573. (*Id.* at 1, 4; *Lepore, id.* at *8-*10.)

This Court finds the Petition is subject to dismissal for the following reasons.

^{1/} Federal courts can take judicial notice of relevant state court records in cases where a state prisoner seeks federal review of his conviction or sentence. *Smith v. Duncan*, 297 F.3d 809, 815 (9th Cir. 2002).

1 First, federal courts lack jurisdiction to issue a writ of mandamus to a state court.
2 *See Demos v. United States Dist. Court for the E. Dist. of Wash.*, 925 F.2d 1160, 1161
3 (9th Cir. 1991).

4 Second, this Court lacks jurisdiction because a state prisoner's exclusive remedy
5 for challenging any aspect of his state custody is to file a federal habeas petition pursuant
6 to 28 U.S.C. § 2254. *White v. Lambert*, 370 F.3d 1002, 1009-10 (9th Cir. 2004). Further,
7 a state prisoner seeking federal habeas review under § 2254 must name his current
8 custodian as a respondent, and the prisoner's failure to do so deprives a district court of
9 jurisdiction. *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994).

10 Third, even if it could be construed as a petition brought pursuant to § 2254, the
11 Court would still lack jurisdiction to consider it because the Petition would constitute the
12 second time that Petitioner has filed an unauthorized second or successive petition with
13 this Court. (*See Lepore v. Watson*, CV 07-6637 DDP AN ("2007 Petition").) Specifically,
14 as explained in the Court's related 6/23/08 Order, the Court lacked jurisdiction to consider
15 Petitioner's 2007 Petition attacking his 2004 Conviction because it was untimely and
16 constituted an unauthorized successive petition to the extent that Petitioner had previously
17 filed a § 2254 petition for the same purpose in 2006 (CV 06-07262 DDP AN) that was
18 dismissed with prejudice because this Court found it was untimely. (*Id.*; 6/23/08 Order
19 (DDP) (docket no.7).) In this regard, the Court finds that in addition to being an
20 unauthorized successive petition, the pending petition constitutes an improper attempt to
21 circumvent the provisions of 28 U.S.C. § 2244(b)(3)(A)-(C) that require a petitioner to
22 first obtain an order from the United States Court of Appeals authorizing the district court
23 to consider the petition. Without leave of the appropriate Court of Appeals, the district
24 court must dismiss a successive petition for lack of subject-matter jurisdiction.
25 *Greenawalt v. Stewart*, 105 F.3d 1268, 1277 (9th Cir. 1997).

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1 Based upon the foregoing, the reference to the Magistrate Judge is vacated and the
2 Clerk is directed to enter a judgment dismissing the petition for lack of jurisdiction. All
3 other motions are denied as moot.

4 IT IS SO ORDERED.

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6 DATED: April 1, 2009



DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE